

DOCKET FILE COPY ORIGINAL

LAW OFFICES  
**HALEY, BADER & POTTS**  
4350 NORTH FAIRFAX DR., SUITE 900  
ARLINGTON, VIRGINIA 22203-1833  
TELEPHONE (703) 841-0606  
FAX (703) 841-2345

**ORIGINAL  
RECEIVED**

**APR 26 1993**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

HENRY A. SOLOMON

RECEIVED

APR 26 1993

Before The  
**Federal Communications Commission**  
 Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

In re Applications of ) MM Docket No. 93-51  
 )  
**MARTHA J. HUBER, et al.,** )  
 )  
 For Construction Permit for a )  
 New FM Station on Channel 234A )  
 in New Albany, Indiana )

TO: The Honorable Richard L. Sippel  
 Administrative Law Judge

**MOTION TO ENLARGE ISSUES**

Rita Reyna Brent ("Brent"), by her attorneys, respectfully moves to enlarge issues against Staton Communications, Inc. ("Staton"). In support hereof the following is shown:

**I. PRELIMINARY STATEMENT**

1. Brent requests specification of a financial issue against Staton:

To determine whether Staton Communications, Inc. is financially qualified to be the Commission licensee of an FM station at New Albany, Indiana.

Brent submits that Staton's bank commitment letter, reflecting the sole source of funding relied on by Staton, is defective as a matter of law.

2. Included among the documents exchanged by Staton on April 9, 1993, pursuant to 47 C.F.R. § 1.325(c)(1), is a November 5, 1991 letter from Home Trust Bank, Gainesville, Georgia (the "Bank Letter").<sup>1</sup> The Bank Letter is addressed to Staton's two shareholders, Ms. Mildred Staton and

<sup>1</sup> This Motion is timely filed within the 15-day period following standardized document production and thus the discovery of documents which are being relied on here. See 47 C.F.R. § 1.229(b)(3).

Mr. Kenneth L. Ramsey, and to the corporation. It is signed by W.A. Gainey, Senior Vice President, Director of Lending. A copy of the Bank Letter is attached hereto as Exhibit A.

3. Staton is a two-tiered corporation. Exhibit 1 to Staton's captioned application, the Stock Subscription and Shareholders' Agreement, provides for two classes of stock: Class A voting and Class B non-voting. Ms. Staton, is the voting shareholder, with 20% equity; Mr. Ramsey is the non-voting shareholder owning the remaining 80% equity interest. The Articles of Incorporation exchanged on April 9 purport to insulate the non-voting and voting shareholders so that Mr. Ramsey, who has other media interests, may not participate in "matters pertaining to day-to-day operations" of Staton's business. A copy of the Articles is attached as Exhibit B.

4. The Bank Letter states that "This bank is favorably acquainted with you and we would be relying on *your commitment to continued participation in the venture and the management of the radio station.*" (Emphasis supplied.) The radio station to which the bank was referring, is Staton's proposed facility on Channel 234A at New Albany, Indiana.






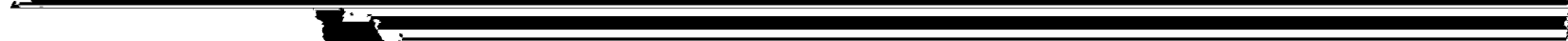

## **II. GROUNDS FOR ENLARGEMENT**

5. The insulation provision contained in Staton's Articles of Incorporation is identical to the insulation provision in the Stock Subscription and Shareholders' Agreement. That insulation provision is repeated verbatim at paragraph 1 of Staton's standard integration statement also exchanged on April 9. The Bank Letter, however, explicitly conditions grant of a "conditional loan commitment" for an amount up to \$425,000, on the continued participation of Ms. Staton -- the voting shareholder -- and

Mr. Ramsey -- the "insulated" non-voting shareholder -- in "the management of the radio station." The bank states that it is "relying" on such participation in management; its reliance is expressed without qualification. It does not distinguish between voting and non-voting shareholders. Nor does the Bank Letter acknowledge the existence of two classes of stock or recognize that one of the borrowers, Mr. Ramsey, is absolutely foreclosed from assuming a

participating role in the JPM venture and indeed is explicitly prohibited from

the bank must express its present willingness to lend money "future conditions permitting." *Merrimack Valley Broadcasting, Inc.*, 82 FCC 2d 166, 167 (1980). Home Trust Bank's apparent willingness to lend money to Staton is conditioned on a future event, participation of Staton's principals in FM station management. Staton cannot, however, satisfy such a condition without violating corporate and administrative law strictures.<sup>3</sup> Accordingly, the Bank Letter is fundamentally flawed and cannot be relied on for any purpose. A substantial and material question exists whether Staton is financially



broadcasting or common carrier construction permit application or other application with the Commission between November 14, 1988, and the present.

E. All appraisals and tax assessments as to any real property owned by Staton or its principals that is proposed to be sold, mortgaged, pledged, or otherwise hypothecated in order to finance the construction and/or operation of the proposed New Albany FM station.

F. All documents relating to existing mortgages, deeds of trust, security interests or other liens against the property of Staton or its principals.

G. All documents relating to such mortgages, deeds of trust, security interest, or other liens existing as of August 14, 1991, against the property of Staton's principals.

H. All documents reflecting Staton's business plan, cost projections, and revenue projections.

WHEREFORE, THE PREMISES CONSIDERED, It is respectfully requested that the subject Motion be Granted.

Respectfully submitted,

**RITA REYNA BRENT**

By: 

Henry A. Solomon  
John Wells King

Her Attorneys

HALEY, BADER & POTTS  
Suite 900  
4350 North Fairfax Drive  
Arlington, VA 22203-1633  
703/841-0606

April 26, 1993



# HomeTrust Bank

EXHIBIT A

RECEIVED

APR 26 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

November 15, 1991

Ms. Mildred Staton  
Mr. Kenneth L. Ramsey  
Staton Communications, Inc.  
1612 Gardiner Lane  
Louisville, KY 40205

Dear Ms. Staton and Mr. Ramsey:

This is to state our conditional commitment to loan up to \$425,000 to finance construction and initial operation of radio station FM Ch. 234-A, licensed to serve New Albany, Indiana. Our willingness to do so is subject to the following conditions:

- 1) You are successful in obtaining approval from the Federal Communications Commission to construct and operate the radio broadcast station; and
- 2) All reasonable and ordinary credit criteria and collateral requirements of the HomeTrust Bank are met at such time as you (a) have received the permit to construct said station and (b) request from HomeTrust Bank a formal and unconditional lending commitment.

While the pricing and terms of amortization of any loan commitment will of course be contingent upon the exact conditions prevailing at the time of such commitment, we contemplate calculating interest on any loan made at the rate of 2% above the prime rate of this Bank at the time of each advance (for information, the prime rate of this Bank is presently 7.5%) and, any loan made will be repaid, after a six month moratorium on principal repayment if necessary, in eight equal semi-annual installments or as otherwise reasonable in line with the financial projections received prior to the time of borrowing.

The precise terms for security of the loan also will be determined at the time of the unconditional loan commitment. However, we contemplate requiring a pledge of the stock of the applicant in the event that it is incorporated, a pledge of the assets of the radio station (subject to security liens held by vendors of equipment, if any), liquid collateral (i.e., CD's, listed stocks, bonds or CSV life insurance) to fully secure the loan and/or we may also require personal guarantees in a form satisfactory to the Bank. Our loan documents will comply with

P.O. Box 1418 Gainesville, GA 30503 404-535-9600  
WASHINGTON & GREEN STREETS • SHERWOOD ON THE GREEN • COLLEGE SQUARE • BROWN'S BRIDGE

all requirements of the Federal Communications Commission including the provision of a minimum of ten (10) days prior written notification to you and to the Federal Communications Commission before any equipment will be repossessed under any default clause of the loan agreement. This Bank is favorably acquainted with you and we would be relying on your commitment to continued participation in the venture and the management of the radio station as a part of the loan application.

Sincerely,



W.A. Gainey  
Senior Vice President  
Director of Lending

WAG:nlbg



Prepared by  
Stanley G. Emert, Jr.  
Bryce & Emert  
3712 77th Avenue SE  
Mercer Island, Washington 98040

**ARTICLES OF INCORPORATION  
of  
Staton Communications, Inc.**

The undersigned natural person of the age of 18 years or more for the purpose of forming a corporation under the general and business corporation law of Kentucky adopts the following articles of incorporation.

Article 1. The name of the corporation is Staton Communications, Inc. The corporation is for profit.

Article 2. The address including street and number, if any, of the corporation's registered office in this state is 1612 Gardiner Lane, Louisville, Kentucky 40205, and the name of its agent at such address is Mildred J. Staton. This is the sole and principal office of the corporation.

Article 3. The aggregate number, class and par value, if any, of shares which the corporation shall have authority to issue shall be 1,000 shares, of which 200 shares shall be designated in its own class as "voting" or "Class A", and of which 800 shares shall be designated in its own class as "nonvoting" or "Class B". The par value is \$0.10. The preferences, qualifications, limitations, restrictions, and the special or relative rights, including convertible rights, if any, in respect to the shares of each class are as follows:

a) Class A or voting stock contains all the rights, without limitation, generally attributed to rights involved with common stock; and

b) Class B or nonvoting stock contains rights of investment only, which stock specifically precludes its owner: from being an employee of the corporation; from serving as an independent contractor or agent in any material capacity for the corporation; from communicating with the owner of Class A or voting stock on matters pertaining to the day to day operations of the corporation's business; from selling his stock without the prior consent of the Class A or voting stock owner; from having any voting rights with regard to any matter of the corporation's business, including, but not limited to, removal of any employee, officer, or director of the corporation; from performing any service for the corporation with the exception of making loans to, or acting as surety for, the business; and from becoming involved in the management or operation of the business of the corporation.

**Article 4.** Inasmuch as all shares authorized are to be issued, no shareholder may acquire additional stock in the corporation. No shares of either class of stock may be converted into the other class of stock. The owner of Class B or nonvoting stock may not sell his stock without the prior consent of the owner of Class A or voting stock.

**Article 5.** The name and place of residence of each incorporator is as follows:

**Stanley G. Emert, Jr.  
3712 77th Avenue SE  
Mercer Island, Washington 98040**

**Article 6.** The number of directors to constitute the Board of Directors is ONE. The person constituting the first Board of Directors is Mildred J. Staton, 1612 Gardiner Lane, Louisville, Kentucky 40205.

**Article 7.** The duration of the corporation is perpetual.

**Article 8.** The corporation is formed for the following purposes:

a) To apply for, own and operate a new broadcast facility to be licensed by the Federal Communications Commission to the community of New Albany, Indiana, and

b) For all other legal purposes.

**Article 9.** The initial capitalization of the business is under \$30,000.00, and the corporation will not commence business until the sum of \$1,000.00 or greater is received by, or on behalf of, the corporation.

**IN WITNESS WHEREOF,** these articles of incorporation have been signed this 13th day of November, 1991.

---

**Stanley G. Emert, Jr.  
Incorporator**

EXHIBIT C

Staton Communications, Inc.  
FM Channel 234A  
New Albany, Indiana

EXHIBIT 4

Integration and Diversification Statement

## **INTEGRATION AND DIVERSIFICATION STATEMENT OF STATON COMMUNICATIONS, INC.**

Staton Communications, Inc. ("the Applicant"), hereby submits the following as its statement of integration and diversification:

1. Staton is a corporation which is authorized to issue 1,000 shares with two classes of stock (voting, and nonvoting). Mildred J. Staton ("Staton") owns 200 shares of voting stock and is the President/Secretary/Treasurer and sole Director of the corporation. Kenneth L. Ramsey owns 800 shares of nonvoting stock. The owner of nonvoting shares has rights of investment only, which stock specifically precludes its owner: from being an employee of the corporation; from serving as an independent contractor or agent in any material capacity for the corporation; from communicating with the owner of voting stock on matters pertaining to the day to day operations of the corporation's business; from selling his stock without the prior consent of the voting stock owner; from having any voting rights with regard to any matter of the corporation's business, including, but not limited to, removal of any employee, officer, or director of the corporation; from performing any service for the corporation with the exception of making loans to, or acting as surety for, the business; and from becoming involved in the management or operation of the business of the corporation.

2. Staton will be the General Manager of the station. As General Manager, she will control all daily operational aspects of the station, including, but not limited to, business, sales, daily programming of the station, public relations, employee hiring and firing, and policy making and implementation. She will work in excess of forty (40)

hours per week at the station.

3. The Applicant will claim credit for Staton's residence. Since 1985, she has lived at 1612 Gardiner Lane, Louisville, Kentucky 40205. From 1983-1985, she lived at 1815 Gardiner Lane, Louisville, Kentucky; from 1979-1983, she lived at 311 S. 43d Street, Louisville, Kentucky; from 1967-1979, she lived at 659 S. 41st, Louisville, Kentucky; and from 1965-1967, she lived at 1060 S. 26th Street, Louisville, Kentucky. All of these residences are within the city grade contour of the Applicant's proposal. In the event of the award of the construction permit to the Applicant, Staton will relocate her residence to the community of license at least sixty (60) days prior to the station going on the air. The Applicant will claim credit for Staton's past city grade service area residence future proposed residence within the community of license.

4. Staton will claim additional enhancement credit for Staton's broadcast/media experience. This experience has been Johnson Communications, Inc.-WLOU, in Louisville, Kentucky, from 1967-1991. During that time, she served in several capacities, including Operations Manager, Business Manager, and Traffic Manager, all of which positions were full-time positions

5. Staton will claim additional enhancement credit for Staton's substantial



Member for about 6 years in the 1970's.

d) Dismas Dierson Center, a minimum security penal facility; Board of Directors Member from 1986-1989; worked to develop programs for inmates in returning to society.

e) YMCA Black Achievers, Chairperson of Special Events, Teen Board Representative, and Steering Committee Member; worked to provide programs for youths in grades 7-12; from 1983-present

f) Council of Women's Presidents, a nonprofit organization consisting of individuals who are, or were presidents of area concerns; worked to assist and develop a professional network of women in career education; Member from 1981-1987, and served a one year term as President.

g) Clothe-A-Child/Food for the Elderly, a nonprofit organization providing clothing and food to needy people; Board of Directors Member from 1989-present.

h) National Council of Negro Women (NCCW)/Louisville Chapter, an organization providing a network of support for blacks; Member from 1989-present; Publicity Committee member for 1992 year.

i) Past President for one year term of Louisville Radio Broadcasters Association; worked for the betterment of broadcast service to the public.

j) American Women in Radio and Television, Louisville Chapter; worked for the improvement of opportunities for women in broadcast employment; Past President (one year term); Membership from 1973 to present.

6. The Applicant will claim further enhancement credit for Staton's black and female status.

7. The Applicant will employ the use of an auxiliary power source at both the transmitter site and the studio site in the event of a primary power outage.

8. In the event of the grant of the Applicant's application, Staton will resign from any employment,, at least sixty (60) days prior to the station going on the air to devote her full time attention to her managerial capacities at the station.

9. The Applicant and no principal thereof has any broadcast interest. See Exhibit 2 to the application for additional information.

**CERTIFICATE OF SERVICE**

I, Dinah L. Hood, a secretary in the law firm of Haley, Bader & Potts, hereby certify that a copy of the foregoing **"Motion To Enlarge Issues"** was mailed, postage pre-paid, this 26th day of April, 1993 to the following:

The Honorable Richard L. Sippel \*  
Administrative Law Judge  
Federal Communications Commission  
2000 L Street, N.W., Suite 214  
Washington, D.C. 20554

Bradford D. Carey Esq.  
Hardy and Carey  
111 Veterans Boulevard, Suite 255  
Metairie, LA 70005  
(Counsel for Midamerica Electronics  
Service, Inc.)

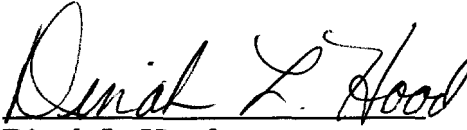
James Shook, Esquire \*  
Hearing Branch, Enforcement Division  
Mass Media Bureau  
Federal Communications Commission  
2025 M Street, N.W., Suite 7212  
Washington, D.C. 20036

Mary L. Smith  
Lou Smith Ministries, Inc.  
P.O. Box 1226  
Jeffersonville, IN 47131  
(Adams Rib, Inc.)

Donald J. Evans, Esq.  
McFadden, Evans & Sill  
1627 Eye Street, N.W., Suite 810  
Washington, D.C. 20006  
(Counsel for Staton Communications)

Dwayne Watkins  
WGZB-96.5  
981 S. Third Street, #400  
Louisville, KY 40203-2261  
(D.E.K.W. Communications, Inc.)

John J. Schauble, Esquire  
Cohen & Berfield  
1129 20th Street, N.W.  
Washington, D.C. 20036  
(Counsel for Martha J. Huber)

  
Dinah L. Hood

\* Hand Delivered